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District Counsel

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re

TULARE LOCAL HEALTHCARE
DISTRICT, dba TULARE
REGIONAL MEDICAL CENTER,

Debtor.

Tax ID #: 94-6002897
Address: 869 N. Cherry Street
Tulare, CA 93274

CASE NO. 17-13797

Chapter 9

DC No.: WW-25

Date: January 25, 2018
Time: 9:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

EXHIBITS TO STIPULATION FOR ASSUMPTION OF EXECUTORY CONTRACT
(PHOENIX HEALTH SYSTEMS)

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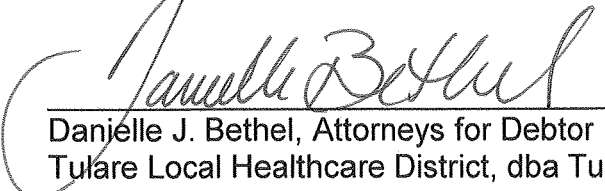
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<u>Exh.</u>	<u>Description</u>	<u>Pages</u>
A	Fifth Amendment to Integrated Information Technology Outsourcing and Consulting Agreement	10

Dated: January 11, 2018

WALTER WILHELM LAW GROUP
A Professional Corporation

By:


Danielle J. Bethel, Attorneys for Debtor
Tulare Local Healthcare District, dba Tulare
Regional Medical Center

Fifth Amendment to the
Integrated Information Technology
Outsourcing and Consulting Agreement
By and Between
Tulare Regional Medical Center
and
Phoenix Health Systems
A Division of Medsphere Systems Corporation

This Fifth Amendment to the Integrated Information Technology Outsourcing and Consulting Agreement, dated June 25, 2015 (the “Fifth Amendment”), is dated as of November 23, 2017 (the “Effective Date”), by and between, Tulare Regional Medical Center (“TRMC”) with its principal place of business in Tulare, CA and Phoenix Health Systems, a division of Medsphere Systems Corporation, a California corporation, with its principal place of business in Carlsbad, CA (“Phoenix”).

WITNESSETH:

WHEREAS, Phoenix and TRMC executed an Integrated Information Technology Outsourcing and Consulting Agreement”, dated June 25, 2015 (the “Original Agreement”);

WHEREAS, Phoenix and TRMC subsequently executed Amendment 1 to the Original Agreement, dated April 20, 2016, Amendment 2 to the Original Agreement, dated August 25, 2016, Amendment 3 to the Original Agreement, dated December 12, 2016 and Amendment 4 to the Original Agreement dated July 18, 2017. Hereafter, The Original Agreement and its four amendments shall be referred to, collectively, as the “Agreement;” and

WHEREAS, Phoenix and TRMC desire to amend certain terms of the Agreement as set forth in this Fifth Amendment.

NOW, THEREFORE, for and in consideration of the agreements of the parties set forth below and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, TRMC and Phoenix agree as follows:

- 1. Except as specifically changed in this Fifth Amendment, all provisions of the Agreement shall not otherwise be deemed to have changed in any regard.
- 2. All terms in the Agreement section numbers not specifically defined or changed in this Fifth Amendment as well as capitalized terms, shall have the same meaning and effect as so defined in the Agreement, as the case may be.
- 3. To the extent that any inconsistencies exist between this Fifth Amendment and the Agreement, the provisions of the Fourth Amendment shall govern.
- 4. Section 1, Term, of the Agreement, is deleted in its entirety and the following is substituted in its place:

1. **TERM**

The initial term of this Agreement shall commence on June 25, 2015 (the “Effective Date”) and shall continue through November 22, 2022 (the “Termination Date”), unless sooner terminated pursuant to the terms of this Agreement. The Agreement shall renew for successive one (1) year renewal terms, unless one party provides written notice to the other party 180 days prior to the expiration of the then current

initial or renewal term., unless sooner terminated pursuant to the terms of this Agreement.

The Parties agree that the Effective Date assumes that the TRMC assumed control of Hospital operations from Healthcare Conglomerate Associates on Wednesday, November 22, 2017.

5. The IT Management table in Exhibit 1-Designated Services of the Agreement is deleted in its entirety and is replaced by the following table:

IT MANAGEMENT	
Service Description	Phoenix will provide overall IT management of IT operations including the Designated Services shown in this Exhibit 1. Phoenix will be accountable for operational support to TRMC in accordance with this Agreement and oversee IT delivery as required to successfully perform the duties under this Agreement.
Responsibilities	<ol style="list-style-type: none">1. Managing delivery of all in-scope Designated Services as provided in this Exhibit 1.2. Managing Phoenix resources as required performing the Designated Services.3. Addressing and escalating operational issues.4. Attending or leading meetings as determined appropriate by Phoenix and TRMC.5. Participating in planning and budgeting sessions with TRMC as requested or required to support IT operations and the Designated Services.

6. The following table is added to Exhibit 1-Designated Services of the Agreement:

APPLICATION MANAGEMENT	
Service Description	Phoenix will manage and maintain the operational and technical support aspects of the application and web services environment. These responsibilities include the day-to-day operations and management of project management, vendor management, maintenance, testing, change management and problem management

APPLICATION MANAGEMENT	
Responsibilities	<ol style="list-style-type: none">1. Create and analyze TRMC business requirements as determined necessary to meet TRMC user needs.2. Manage relationships with TRMC application vendors as necessary to ensure seamless support.3. Support and monitor interfaces between TRMC applications.4. Provide recommendations for technical design and engineering alternatives within the application environment.5. Develop translation of user requirements into functional requirements in support of changes from outside application vendors.6. Define and manage the security definitions for database requirements and end user needs.7. Administer and proactively monitor the physical resource needs of the application environment.8. Perform backup and restoration services in accordance with established vendor guidelines and TRMC requirements.9. Oversee, manage and ensure proper installation of all updates, patches, and fixes to application software listed in Exhibit 4 as In-Scope Applications, working with the appropriate vendors as defined.10. Perform software functional, integration and regression testing as needed to ensure proper installation of outside application vendor software updates.11. Work closely with TRMC end users to provide and develop test script methodologies, as needed.

7. Exhibit 2 – Payment Schedule is deleted in its entirety and the attached new Exhibit 2 – Payment Schedule is substituted in its place.
8. Exhibit 4-In-Scope Software of the Agreement is deleted in its entirety and the attached new Exhibit 4-In-Scope Software is substituted in its place.
9. TRMC filed for Chapter 9 bankruptcy on or about September 30, 2017. As an accommodation to TRMC for pre-petition amounts owed to Phoenix, Phoenix agrees to accept \$386,686.67 in full settlement of amounts due under this Agreement, thereby

providing TRMC a 25 percent discount to amounts owed Phoenix prior to October 1, 2017. TRMC will pay Phoenix the agreed to \$386,686.67 pre-petition amounts due in monthly installments of \$10,741.29 beginning 120 days after TRMC admits its first patient after re-opening and continuing for 36 months.

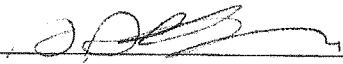
- 10. This Fifth Amendment shall become effective only after execution by the parties hereto and entry of a final order of the United States Bankruptcy Court for the Eastern District of California authorizing TRMC to enter into this Fifth Amendment."

- 11. This Fifth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

IN WITNESS WHEREOF, TRMC and Phoenix have each caused this Fifth Amendment to be signed and delivered by its duly authorized representative as of the day and year first written above.

TULARE REGIONAL MEDICAL CENTER

PHOENIX HEALTH SYSTEMS

By: 


By: _____

Name: SANFORD HASKINS

Name: Irv H. Lichtenwald

Title: CEO

Title: CEO

EXHIBIT 2 - PAYMENT SCHEDULE

I. PAYMENTS TO PHOENIX

The amounts and rates set forth below represent the complete set of charges (the “Designated Services Fees”) to be invoiced to TRMC for the Designated Services described in Exhibit 1, during the term of the Agreement. These monthly fees shall increase on each anniversary of the Agreement by three percent (3%) over the cost of the prior year through the end of Agreement term. The Designated Fees will commence immediately upon the Effective Date of the Agreement.

A. Designated Services Fees – Service Desk

Service Desk Pricing Tiers		
Description		Monthly Fee
Tier 1	Service Desk Support up to 500 contacts per month (Minimum Bill)	\$6,365.40
Tier 2	501 to 550 contacts per month	\$6,874.63
Tier 3	551 to 600 contacts per month	\$7,424.60
Tier 4	601 to 650 contacts per month	\$8,018.57
Tier 5	651 to 700 contacts per month	\$8,579.87
Tier 6	701 to 750 contacts per month	\$9,180.47
Tier 7	751 to 800 contacts per month	\$9,823.10
Tier 8	801 to 850 contacts per month	\$10,510.71
Tier 9	851 to 900 contacts per month	\$11,246.46
Tier 10	901 to 950 contacts per month	\$12,033.71
Tier 11	951 to 1000 contacts per month	\$12,876.07
Tier 12	1001 to 1050 contacts per month	\$13,777.40

Beginning January 1, 2016, the average monthly contact volume will be computed for the preceding three months (calendar quarter). If the average contact volume is in a tier greater, or lesser, than the tier for the immediate past calendar quarter, the contact volume-pricing tier will be adjusted for the next quarterly billing cycle. At no time will the monthly billing fall below Tier 1 pricing. This quarterly computation will continue through the term of the Agreement.

B. Designated Service Fees – Monthly Professional Fees

	Total
Months 1-2	\$91,493
Month 3	\$94,767
Months 4-6	\$104,286
Months 7-8	\$107,737
Months 9-13	\$116,051
Thereafter	\$117,886

The fees in the table above contain Service Desk Fees which at the Effective Date of this Addendum fall into Tier 8 as described above. Fees do not include support for MS4 or NetGen systems. Fees for Backup and Replication Services are not contained in this table. The Designated Service Fees may be modified or amended in writing from time to time as necessary to reflect the addition of any discrete set of additional Designated Services, the termination of any discrete set of Designated Services, or for any Additional Services or Change Orders. Any such modification must be made in accordance with the applicable provisions of the Agreement.

Effective August 25, 2016, and each subsequent month during the term of this Agreement, Phoenix will invoice TRMC \$1,523.00 per month for up to 60 terabytes of storage, as payment for the Disk Based Backups and Remote Replication services described in Exhibit 1 of the Agreement as amended by the Second Amendment.

Quarterly, beginning in January, 2018, the average monthly end user devices will be computed for the preceding three (3) months (calendar quarter). If the end user device count increases by 200 or more above the last billable device count, staff will be increased by one staff person for each increase of up to 400 devices. A corresponding increase in Designated Service Fees will be made. If the average monthly number of devices decreases, a similar reduction will be made.

II. EXPENSES

The professional fees above are for performing the Designated Services and include reimbursement to Phoenix for any out-of-pocket expenses associated with IT leadership, analysts, and on-site technical support. Should additional support be needed by Phoenix off-site staff, associated expenses will be billed as incurred. Such out-of-pocket expenses will not be incurred by Phoenix without prior authorization of TRMC.

III. FEES FOR CHANGES IN ENVIRONMENT

If, during the term of the Agreement, there is a material increase or decrease in the scope of TRMC operations that materially impacts the resources required, or which materially affects the Designated Services provided for in this Exhibit 1, the Parties agree to negotiate in good faith to re-structure the scope, service levels or pricing, as appropriate, for the then existing TRMC business. Such changes will be documented in a Change Order, or Amendment, to this agreement.

EXHIBIT 4 – IN-SCOPE APPLICATIONS

The Parties agree that they shall attach a revised list of the “Applications” (interface, end user environment, and telecommunications) which will be “In-Scope” as part of the Designated Services within sixty (60) days of the date of this Amendment. The mutual agreement to such list shall be shown by the execution of this Exhibit 4 at such time by both Parties. Until the Parties attach and execute such a revised list, the list shown below shall be the list of “In-Scope Applications” pursuant to Exhibit 1.

CLIENT PROVIDED IN-SCOPE APPLICATIONS						
Client: TRMC			Date:			
Client Applications and Software						
Application Vendor	Description	Application Version/Name	Independent or Interfaced	Ownership	Install Location	Purchased or Leased
API (GE)	HR Time System	2015.1		TRMC	TRMC Data Center	Purchased
Cerner	Community Works Millennium EHR/Billing System	2015.19	Interfaced		Cerner Data Center	Leased
Comcast	VOIP Telephony system		Interfaced	TRMC	TRMC Data Center	
GE MacLab	Cardiology system		Interfaces	TRMC	TRMC Data Center	Purchased
Fuji Synapse PACS	PACS		Interfaced	TRMC	TRMC Data Center	Purchased
Microsoft	Great Plains CL/Accounting		Interfaced	TRMC	TRMC Data Center	Purchased
UltraLinq	Imaging system		Interfaced		Remote Hosted	Leased
Miscellaneous Items:						